

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
July 1, 2003
6:30 p.m. Closed Session
7:30 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:30 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiators: Tom Wilson, Cherie Rosenquist and Eddie Kreisberg.

Unrepresented Position: City Attorney

Employee Organizations: IAFF Local 1699, LIUNA, MEA, MPOA, MSA, ProTech, and Unrepresented

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:30 p.m.)

V. APPROVAL OF MINUTES: June 3, 2003, and June 17, 2003

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

- Presentation to City of Milpitas: APWA 2002 Project of the Year Award for SR-237/I-880 Interchange

Commendations:

- Justin Lim – Santa Clara Association of Realtors Essay Contest Winner

Proclamation:

- Parks and Recreation Month, July 2003

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

- 1. Approve Entertainment Event Permit: Art & Wine Summer Festival: August 16-17, 2003: Milpitas Chamber of Commerce (Staff Contact: Gail Blalock, 586-3001)**
- 2. Approve a Density Bonus and Negative Declaration No. P-EA2003-1 and Uphold Planning Commission Approval of "S" Zone No. P-SZ2002-6 and Use Permit No. P-UP2002-35 Applications for Apton Plaza – 230 North Main Street (Staff Contacts: Felix Reliford, 586-3071; and Staci Pereira, 586-3278)**
- 3. Introduce Ordinance No. 38.762 Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the City of Milpitas Municipal Code (P-ZT2003-2) (Staff Contact: Troy Fujimoto, 586-3287)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: June 3, 2003, and June 17, 2003

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Review Project Closeout Progress; Approve Change Orders and Purchase Orders; Adopt Resolutions for Initial Acceptance: Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3220)

RA6. Approve Request from PWA Associates, LLC to pay off Agency's Loan (Staff Contact: Emma Karlen, 586-3145/Jane Corpus, 586-3125)

***RA7. Authorize the Executive Director to enter into a Professional Services Agreement Between the Milpitas Redevelopment Agency and various consultants to analyze the feasibility of a Series 2003 Tax Allocation Bond (Staff Contact: Blair King, 586-3060)**

RA8. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 4. Request to Name the Fire Training Class and Community Room in memory of former Fire Chief Michael Harwood: Mayor Esteves (Staff Contact: Bill Weisgerber, 586.2811)**
- *5. Approve Appointment to the Community Advisory Commission: Mayor Esteves**
- 6. Request the City Manager to Collect and Organize the Various Adopted City Council Policies and Produce a City Council Policy Handbook: Vice Mayor Dixon (Staff Contact: Thomas Wilson, 586-3050)**
- 7. Approve 50th Birthday Celebration Plan, Direct Staff to Return with \$48,250 Budget Appropriation to Implement the Plan, Approve Historical Book Concept and Select Winning Logo Design: Councilmember Polanski (Staff Contact: Cindy Maxwell, 586-3282)**

XV. UNFINISHED BUSINESS

- 8. Approve Library and Senior Center Site Proposal (Staff Contacts: Greg Armendariz, 586-3220, Mark Rogge, 586-3257, Cindy Maxwell, 586-3282)**

XVI. NEW BUSINESS

- 9. Authorize Implementation of the Economic Development on-Line Commercial Property Inventory and Search Program (Staff Contact: Blair King 586-3060)**
- *10. Authorize Cost Recovery Program for Legal Services Associated with Land Use Development Applications and Authorize Amendment No. 4 to the Agreement for Legal Services Between the City and Meyers Nave (Staff Contact: Steve Mattas, 586-3040)**
- *11. Approve Assignment and Assumption of Sign Lease from Great Mall of the Bay Area Associates, L.P. to The Mills L.P. (Staff Contact: Steve Mattas, 586-3040)**

XVII. ORDINANCE

- *12. Adopt Ordinance No. 23.9 Amending Chapter 2 of Title I of the Municipal Code Relating to Purchasing (Staff Contact: Lou Zenzen, 586-3161)**

XVIII. RESOLUTIONS

- *13. Adopt Resolution Granting Initial Acceptance: 2001 Street Resurfacing (Project No. 4182) (Staff Contact: Steve Erickson: 586-3317)**
- *14. Adopt Resolution Granting Initial Acceptance: McCandless Box Culvert Repair (Project No. 4182A) (Staff Contact: Steve Erickson, 586-3317)**
- *15. Adopt a Resolution to Temporarily Suspend Section 6.02 of the City's Personnel Rules and Regulations as Established by Resolution No. 5947 (Staff Contact: Cherie Rosenquist 586-3082)**

XIX. BIDS AND CONTRACTS

- *16. Amend Master Services Agreement with Intergraph Corporation to Extend The Agreement through June 30, 2004 (Staff Contact: Terry Medina, 586-2703)**
- *17. Approve Agreement with City of San Jose and Property Owners to Provide Water and Sewer Services to Parcels Outside the City Limit on North McCarthy Boulevard (Staff Contact: Mehdi Khaila, 586-3328)**
- *18. Approve Agreement Amendment: HMM Incorporated, Montague Expressway Widening (Project No. 4179) (Staff Contact: Steve Erickson, 586-3317)**
- *19. Approve Amendment to Landscape Maintenance Agreement with the Irvine Development Company, Program 9474. (Contact: Mehdi Khaila, 586-3328)**
- *20. Approve Agreement Amendment: Sugimura & Associates, Montague Expressway Widening (Project No. 4179) (Staff Contact: Steve Erickson, 586-3317)**
- *21. Approve Change Order for \$9,300 to SBC Datacom for Additional Boring Charges Necessary for the Installation of Fiber Optic Cable to Fire Station 2 (Project No. 8093) (Staff Contact: Terry Medina, 586-2703)**

- *22. **Approve Consultant Agreement with B A Zuhdi Consulting Engineers (Staff Contact: Greg Armendariz 586-3220)**
- *23. **Approve Contract Between Milpitas Recreation Services and the City of Fremont Tennis Center. (Staff Contact: Lynette Wilson, 586-3216)**
- *24. **Approve Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: C. Rosenquist, 586-3082)**
- *25. **Approve Plans and Specifications: Interim Senior Center Site Improvements (Project No. 8151) (Staff Contact: Mark Rogge, 586-3257)**
- *26. **Approve Senior Nutrition Contract with County of Santa Clara (Social Services) (Staff Contact: Kathleen Yurchak, 586-3209)**
- *27. **Approve Plans and Specifications: 2003 Street Slurry Seal (Project No. 4182) (Contact: Steve Erickson, 586-3317)**
- *28. **Approve Renewal of Annual Hardware Support and Maintenance Agreements through June 30, 2004 (Staff Contact: Terry Medina, 586-2703)**
- *29. **Authorize City Manager to Execute Contract with the City of San Jose to Provide Animal Control Services (Staff Contact: Felix Reliford 586-3071)**
- *30. **Authorize Purchase of Curbside Recycling Bins (Staff Contact: Lou Zenzen, 586-3161)**
- *31. **Authorize the Upgrade of Fifty FileMaker Pro Software Licenses to Version 6.0 (Project No. 8109) (Staff Contact: Terry Medina, 586-2703)**
- *32. **Award Construction Contract: Park Playground Equipment Upgrade (Project No. 5077) (Staff Contact: Steve Erickson, 586- 3317)**
- *33. **Award Construction Contract: Traffic Signal at Barber Lane and Bellew Drive (Project No. 4212) (Staff Contact: Steve Erickson, 586- 3317)**
- *34. **Award Bid for Purchase of a Replacement Microfilm Reader/Printer (Staff Contact: Lou Zenzen, 586-3161)**

XX. CLAIMS AND DEMANDS

- *35. **Authorize Budget Appropriation and Payment of Invoices for Emergency Repair of Pavement Subsidence at North McCarthy Boulevard (Project No. 6057) (Staff Contact Mike McNeely, 586-3301)**
- *36. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**
- *37. **Approve Payroll Registers (Staff Contact: Emma Karlen, 586-3145)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY,AUGUST 5, 2003, AT 7:00 P.M.**

NOTICE:

Beginning August 5, 2003, the public portion of the City Council meetings will begin at 7:00 p.m.

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
July 1, 2003
6:30 p.m. Closed Session
7:30 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS

1. APPROVE ENTERTAINMENT EVENT PERMIT: ART & WINE SUMMER FESTIVAL: AUGUST 16-17, 2003: MILPITAS CHAMBER OF COMMERCE (STAFF CONTACT: GAIL BLALOCK, 586-3001)

BACKGROUND: The Milpitas Chamber of Commerce has submitted an application for an Entertainment Event Permit to hold an Art & Wine Summer Festival along South Milpitas Boulevard between Los Coches and Turquoise Streets continuing west on Los Coches on Saturday, August 16, and Sunday, August 17, 2003, from 10:00 a.m. to 6:00 p.m. each day. The application has been reviewed and approved by the various City departments and the public hearing advertised as required by the City Ordinance.

The Chamber has also submitted a letter requesting waiver of the application fees for the Entertainment Event Permit and the business license requirements for the Festival. The Chamber, as a non-profit agency, is exempt from the \$100 Entertainment Permit application fee and the Council may waive the \$15 application processing fee. The Council has the authority to exempt the vendors from the requirements for the business licenses. The Council has waived the fees and approved the Entertainment Event Permit in previous years. The letter also requested permission to place a banner in a strategic location near City Hall; however, that is no longer possible and the Chamber is aware of that.

RECOMMENDATION:

1. Close the public hearing.
2. Waive business license fee requirements and approve the Entertainment Event Permit for a Summer Festival to be held on August 16, and 17, 2003, as requested by the Milpitas Chamber of Commerce, subject to the conditions noted and receipt of a certificate of insurance.

2. APPROVE A DENSITY BONUS AND NEGATIVE DECLARATION NO. P-EA2003-1 AND UPHOLD PLANNING COMMISSION APPROVAL OF "S" ZONE NO. P-SZ2002-6 AND USE PERMIT NO. P-UP2002-35 APPLICATIONS FOR APTON PLAZA – 230 NORTH MAIN STREET (STAFF CONTACTS: FELIX RELIFORD, 586-3071; AND STACI PEREIRA, 586-3278)

BACKGROUND: Apton Plaza is a proposed Midtown 5-story, mixed use development consisting of 102 apartments and 6,000 square feet of retail. Design of the development includes deviations from the MXD-TOD (Mixed Use Transit Oriented Development Overlay District) height and setback regulations, a density bonus and a vacation of a portion of Weller Lane, North Main Street and Railroad Court, as well as a land exchange with the City. The Planning Commission reviewed the Apton Plaza project at their meeting on May 14, 2003 and approved "S" Zone No. P-SA2002-6 and Use Permit No. P-UP2002-35 applications subject to the revised conditions and recommended Council approval of the density bonus. This item was agendaized for review by the City Council at its meeting on June 17, 2003. At the applicant's request, the item was continued to the July 1, 2003 meeting to allow time to review financing options for the project.

The 15% density bonus the applicant seeks is to exceed the maximum density (40 units per acre) allowed under the Mixed Use land use designation with TOD overlay for a density bonus of 46 units per acre. The applicant intends to meet the state and city (Section 41 of the Zoning Ordinance) Density Bonus regulations by designating a certain percentage of units affordable to lower income households. The city must grant a density bonus and at least one concession or incentive or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, if the applicant for the housing development agrees or proposes to construct at least one of the following:

1. 20% of the total number of units of a housing development for lower income households;
2. 10% of the total number of units of a housing development for very low- income households;
3. 50% of the total number of units in a housing development senior residents;
4. 20% percent of the total units in a condominium project.

The applicant has agreed to reserve 18 affordable units (9 very low income, 5 low income and 4 moderate income) to meet the density bonus requirements and Midtown Specific Plan affordable housing policies. The nine units reserved for very-low income households (10% of the 89 units allowed under the land use) qualify the project for a density bonus. Therefore, the applicant is proposing 102 units; 13 units more than allowed under the existing land use designation and is requesting the following reductions in the MXD-TOD development standards as concessions:

1. Exceeding 4-story building height and footage height limit maximums.
2. Reduced building setback of 16 feet on Weller Lane.

A Negative Declaration, a statement briefly describing the reasons that the proposed project will not have a significant effect on the environment, was completed for this project and recommended for approval by the Planning Commission. The review period began on March 6, 2003 and ended March 26, 2003. Staff did not receive any public comment on this document. A statement of conformance was attached to the negative declaration that indicates the project is in conformance with the previously approved Milpitas Midtown Program EIR. The Program EIR provided mitigation measures for air quality, biological resources, hazardous materials, cultural resources, traffic, and utility impacts. Of these types of impacts, only the traffic mitigation from the Midtown EIR will be applicable to this project and is included as a condition of approval. To enable the Council to better understand the design aspects of the project and the manner in which the additional density bonus units are incorporated into the project design, the City Manager has exercised his ability under the Municipal Code (Section I-20-6.03) to pull forward the Planning Commission approved "S" Zone and Use Permit applications. This has been done solely for the purpose of edification. Details regarding the project design are discussed in the staff report in the Council's agenda packet.

RECOMMENDATION: Uphold the Planning Commission's approval of "S" Zone No. P-SZ2002-6 and Use Permit No. P-UP2002-35 applications and approve the requested density bonus and Negative Declaration (P-EA2003-1) subject to the Findings and Recommended Special Conditions included in the Council's agenda packet.

3. INTRODUCE ORDINANCE NO. 38.762 AMENDING TITLE XI, CHAPTER 10 (PLANNING, ZONING AND ANNEXATION) OF THE CITY OF MILPITAS MUNICIPAL CODE (P-ZT2003-2) (STAFF CONTACT: TROY FUJIMOTO, 586-3287)

BACKGROUND: The Municipal Code (Chapter 6 – Massage Establishments and Practitioners) recognizes that massage uses typically occur in conjunction with doctors offices (including but not limited to, surgeons, chiropractors, osteopaths, nurses, physical therapists and acupuncturists), personal fitness centers, gymnasiums, athletic facilities and clubs, hospitals, nursing homes, sanitariums and other healthcare facilities licensed by the state, accredited high schools, junior colleges, colleges and universities in association with coaches, and trainers and trainers of amateurs, semi-professional and professional athletes or athletic teams.

Recent business license observations regarding accessory massage practitioners have led to initiation of improvements to the city's business license massage permit and zoning review procedures to tighten processes and regulations. Toward this end an amendment to the massage code was adopted at the June 17, 2003 City Council meeting. In addition, the City Attorney's office has recommended the zoning code amendment included in the Councils agenda packet to more closely align the zoning code with the massage code and to clearly set forth what has been interpreted and enforced since 1994 – the last amendment of the Massage Code. The massage distinction for salons made in the massage code is proposed to be carried into the zoning code in this amendment. Thus, as has been restricted at the zoning review level over the past 9 years, the proposed zoning code amendment limits massage in salons, barber shops, and healing art practices to massage of the head, neck and shoulders.

An Initial Study and Draft Negative Declaration were prepared for this zoning code amendment. The commenting period began on May 28, 2003 and closed on June 17, 2003. Staff did not receive any comments. The impact is determined to be less than significant and is discussed in the Initial Study included in the City Council's agenda packet.

At its June 11, 2003, meeting, the Planning Commission held a public hearing and recommended Council approval of proposed Ordinance No. 38.762 and related Draft Negative Declaration.

RECOMMENDATION:

1. Close the Public Hearing.
2. Waive reading beyond the title and introduce Ordinance No. 38.762.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: June 3, 2003, and June 17, 2003

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. REVIEW PROJECT CLOSEOUT PROGRESS; APPROVE CHANGE ORDERS AND PURCHASE ORDERS; ADOPT RESOLUTIONS FOR INITIAL ACCEPTANCE; CIVIC CENTER (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)

BACKGROUND: The project construction delivery system is a multiple prime contractor process, where the City contracted all the elements of work with individual contractors. Thyssen Elevator Corporation dba Thyssen Dover Elevator has fulfilled all of their contract obligations including completion of all punchlist work. All of the contractor's work has been inspected and approved. Staff is recommending adoption of a resolution granting initial acceptance of the contract. Staff also recommends release of the contract retention's. The work is subject to one-year warranty period beginning on the date of initial acceptance. The contractor's faithful performance bond for each contract may be reduced to 10% of the contract amount.

Two change orders for acquisition of high-density file system and purchase order to modify an existing display case are also recommended for approval. The total cost for these change orders and purchase orders is \$17,281 and sufficient funds are available in the project contingency.

RECOMMENDATION:

1. Adopt resolution granting initial acceptance of contract work with Thyssen Elevator Corporation dba Thyssen Dover Elevator, subject to a one year warranty period and reducing the faithful performance bond to 10% of each contract;
2. Approve contract change orders and purchase order included in the proposed change order summary sheet.

RA6. APPROVE REQUEST FROM PWA ASSOCIATES, LLC TO PAY OFF AGENCY'S LOAN (STAFF CONTACT: EMMA KARLEN, 586-3145/JANE CORPUS, 586-3125)

BACKGROUND: In November 1998, the Agency Board approved a \$1,000,000 loan at an annual interest rate of 6.35% to PWA Associates, LLC (PWA), developer of the Parc Metro housing development. The loan was funded from the Agency's 20% set-aside fund in exchange for affordability restrictions on 68 units of low and moderate income multi-family housing. The loan was disbursed in July 1999. Since then, construction has completed on the multi-family rental units and the project is 100% leased. Under the loan terms, the Agency's loan will be repaid from 35% of the surplus cash generated from the rental income after the development has satisfied its principal debt payments and operating expenses. To date, PWA has not made any interest payments on the loan due to insufficient surplus cash caused by changes in the rental market. The outstanding loan balance at the end of June 2003 including principal and interest was approximately \$1,273,165.

PWA has requested to pay off the outstanding balance in its entirety at approximately 30% discount rate of the outstanding loan balance. The proposed pay off amount is \$895,000. The primary reason for the request is that PWA is required to convert the principal construction loan into a permanent mortgage loan. The new lender would not allow any second lien on the deed of trust, even with the Agency's loan in a subordinated position. The property was appraised at \$9,650,000. The maximum amount that PWA could obtain from the refinancing is \$7,720,000. After satisfying the construction loan, PWA proposes to pay off the Agency's loan with the remaining refinancing proceeds of \$895,000. Based on current cashflow and an assumption of 3% annual increase in both revenue and expenses, staff estimated that the Agency's loan would be in a negative amortization situation until 2031 (i.e., PWA would not be able to reduce the principal amount of \$1,000,000 until 2031). According to PWA, refinancing of the construction loan cannot be accomplished without paying off the Agency's loan.

Staff recommends the Agency Board's approval of PWA request for the following reasons:

1. The Agency has achieved its primary goal of providing 68 affordable rental units for this project.
2. Future cashflow is uncertain. Based on current assumptions, the Agency's loan will be in a negative amortization situation until 2031.
3. The Agency can utilize \$895,000 immediately for other housing projects.
4. PWA cannot refinance the construction loan, with a second lien on the deed of trust.

RECOMMENDATION: Approve the request of PWA Associates, LLC to pay off the Agency's loan.

***RA7. AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE MILPITAS REDEVELOPMENT AGENCY AND VARIOUS CONSULTANTS TO ANALYZE THE FEASIBILITY OF A SERIES 2003 TAX ALLOCATION BOND (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: The eighth amendment to the Redevelopment Plan has given the Agency the capacity to refinance debt and to issue new bonds. Currently, interest rates are at a historically low point. A bond issue in the present market will allow the Agency to leverage its proceeds to maximize Redevelopment Agency resources and to lower its outstanding debt by an anticipated full percent or more. This will also provide the Agency with the funds for the development of the

Elmwood property and priority capital projects such as the Library, Senior Center, and Main Street and Abel Street reconstruction. The timing of refinancing and the issuing of new debt is critical to take advantage of the very favorable economic conditions.

In order to engage the necessary financial consultant team, it is recommended that the Agency enter into a professional services agreement with Fraser & Associates and Lamont Financial Services to provide independent fiscal consulting and financial advising services, and with Jones Hall to provide Bond and Disclosure Counsel services. Fraser & Associates provided cash flow analysis for the Plan's eighth amendment and has teamed with Lamont Financial Services to provide analytical resources necessary to evaluate the structure of a new bond issue. Jones Hall served as Bond Counsel for the Agency in 1997 and Bond and Disclosure Counsel for the Agency in 2000.

The Fraser and Lamont team propose a fixed not-to-exceed fee of \$157,500. For Bond Counsel services, Jones Hall proposes a graduated fee structure that is not to exceed \$125,000, plus \$3,000 in expenses. For Disclosure Counsel, Jones Hall proposes a flat rate of \$50,000 per series of Bonds. The proposed fees have been reviewed and are considered usual and customary.

RECOMMENDATION: Authorize the Executive Director to execute a professional services agreement with Fraser & Associates/Lamont Financial Services for Fiscal Consultant/Financial Advisory Services in an amount not to exceed \$157,500, and Jones Hall for Bond and Disclosure Counsel Services in an amount not to exceed \$178,000 for each series of Bonds, subject to approval as to form by the Agency Attorney.

RA8. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

4. REQUEST TO NAME THE FIRE TRAINING CLASS AND COMMUNITY ROOM IN MEMORY OF FORMER FIRE CHIEF MICHAEL HARWOOD: MAYOR ESTEVES (STAFF CONTACT: BILL WEISGERBER, 586.2811)

BACKGROUND: Michael Harwood, former Milpitas Fire Chief and long time resident, passed away last October. Mayor Esteves desires to appropriately recognize Chief Harwood's impact throughout our community and as Fire Chief for twenty years. At the request of the Mayor, the Fire Chief has coordinated with the Harwood family to determine a fitting recognition. In cooperation with the Harwood family, staff is recommending designating the Fire Training Class and Community Room with an appropriate memorial commemorating highlights of career accomplishments and contributions by former Fire Chief Harwood.

Staff will return for Council approval on a fully developed memorial plaque designating the Harwood Memorial Training Class and Community Room.

RECOMMENDATION: Approve conceptual remembrance to recognize Mr. Harwood's contributions to the City and direct staff accordingly.

***5. APPROVE APPOINTMENT TO THE COMMUNITY ADVISORY COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the appointment of Nestor Luna to the Community Advisory Commission to fill an existing vacancy in the Alternate No. 4 position with a term expiring January 2005. A copy of Mr. Luna's application and copies of all applications on file for the Community Advisory Commission are included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointment of Nestor Luna to the Community Advisory Commission to fill an existing vacancy in the Alternate No. 4 position with a term expiring January 2005.

6. **REQUEST THE CITY MANAGER TO COLLECT AND ORGANIZE THE VARIOUS ADOPTED CITY COUNCIL POLICIES AND PRODUCE A CITY COUNCIL POLICY HANDBOOK: VICE MAYOR DIXON (STAFF CONTACT: THOMAS WILSON, 586-3050)**

BACKGROUND: Over the years, the City Council has adopted a number of Council Policies to provide direction to staff and to establish guidance and structure for the City Council. The City Council Policies have not been collected and organized in a single format, making reference difficult.

RECOMMENDATION: Direct the City Manager to collect and organize the various adopted City Council Policies, present them for City Council review, and then publish them in a hard copy and electronic format.

7. **APPROVE 50TH BIRTHDAY CELEBRATION PLAN, DIRECT STAFF TO RETURN WITH \$48,250 BUDGET APPROPRIATION TO IMPLEMENT THE PLAN, APPROVE HISTORICAL BOOK CONCEPT AND SELECT WINNING LOGO DESIGN: COUNCILMEMBER POLANSKI (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

BACKGROUND: The City of Milpitas will celebrate the 50th anniversary of incorporation on January 26, 2004. On February 4, 2003, the City Council created a Committee to provide guidance on planning and implementing the 50th celebration, and report back to the Council with a draft plan and proposed budget. The 22 member Committee is comprised of at least one member from each of the City's commissions and committees with Councilmember Polanski as the Council liaison.

Celebration Plan

Over the course of six meetings, the Committee developed a Celebration Plan that includes a birthday party on January 26, 2004 and a combination 50th birthday party and July 4 festivities for the community. The Committee proposes that the 50th birthday theme be incorporated into existing city events and activities throughout the year through the use of a logo, historical information, recognitions, and partnering with sponsoring local organizations. The Committee recommends a budget of \$48,250 for the year's worth of activities. Additional detail on the Committee's recommendations is included with the Council's mailed agenda packet.

Historical Book

The Committee also considered a proposal from the *Milpitas Post* to collaborate on a historical book in honor of the city's 50th birthday. The Post researched similar projects in other jurisdictions, such as Los Altos, San Jose, Santa Clara, and Mountain View. A copy of the draft proposal and research is attached to the Council's mailed agenda packet.

The Committee unanimously recommends the proposal as a desirable and viable project particularly with the use of private sponsorships to assist with the project cost. Sponsors could be included in the book through a series of company profiles and/or congratulatory notices. The Committee asked the Post to prepare a quote based on the following parameters: "Perfect binding" (square-backed, soft cover), 8.5"x11" horizontal, 4-color cover with one color text and photos, 100 pages, and a minimum run of 1,000 editions. The quote from the Post was not due until after the time of agenda mailing. A verbal report on the quote will be provided at the meeting.

Logo Design

Lastly, the 50th Birthday Committee initiated a design contest for a 50th birthday logo. Eleven contestants submitted 25 designs. A subcommittee selected and ranked the top four designs. On June 18 the Committee recommended the City Council select entry "A2" as the winning entry and direct that the logo be used as appropriate on all City literature and paraphernalia during calendar year 2004.

RECOMMENDATION:

1. Approve the 50th Birthday Celebration Plan as proposed by the 50th Birthday Committee;
2. Direct staff to return to the City Council during FY 2004-05 with a budget appropriation request of \$48,250 to fund the 50th Birthday Celebration Plan;
3. Approve the concept of collaborating with the Milpitas Post on a historical book to commemorate the City's 50th birthday and instruct staff to return at the next Council meeting with a detailed project proposal including costs; and,
4. Select Exhibit A2 as the winning 50th Birthday logo design with the alpha font modified to improve legibility at a reduced scale and direct staff to notify and thank the contestants for their efforts and to use the winning logo design as appropriate on all City published material and paraphernalia during calendar year 2004.

XV. UNFINISHED BUSINESS

8. APPROVE LIBRARY AND SENIOR CENTER SITE PROPOSAL (STAFF CONTACTS: GREG ARMENDARIZ, 586-3220, MARK ROGGE, 586-3257, CINDY MAXWELL, 586-3282)

BACKGROUND: The Milpitas Library is currently planned to be razed and reconstructed at its current location at the Civic Center. The Senior Center, previously located at 160 North Main Street and currently operating temporarily at the Cracolice Building at 540 S. Abel St., is also planned be renovated and enlarged at the 160 North Main Street site. The approved Capital Improvement Program includes pre-design studies for the Library and Senior Center projects. The purpose for these pre-design studies is to determine the building programs, identify design or construction issues and perform a site analysis for each of the projects, before initiating any design work or incurring design expenses. The pre-design effort for each project will continue to the end of this year.

The preliminary site analysis found that each location has significant space constraints for their respective larger facilities. The increased size of the library and Senior Center buildings also creates an increase in parking demand for each building. In order to meet the larger parking demands for the library, a multi-level parking structure is required. The Senior Center building addition would use up some of the existing parking areas, causing a potential parking shortage.

The site constraints at the Civic Center would also impact the construction of the library significantly, because of the lack of available construction "staging" area at the Civic Center. The garage and library would have to be constructed sequentially, resulting in a much longer construction schedule. The Library would operate out of a temporary location (still to be determined) during the time the Library is demolished and the new building is under construction.

PROPOSAL

After development of several alternative concepts for each of the projects, it became clear that the site constraints prevent the development of ideal and efficient conceptual building layouts for each project. An alternative has been considered and is proposed which allows the City to provide the community with the best location for each of these projects, while resolving the above issues.

This proposal consists of designating the historic Milpitas Grammar School building at 160 North Main Street as the centerpiece of the new Public Library. The new library would be integrated into the renovated historic building and an appropriately proportioned building addition, in order

to meet the new library space needs. The building addition would be carefully designed to honor and respect the historic structure. A new multi-level parking structure could be positioned between the Library and the railroad tracks, by closing off a portion of Winsor Street directly behind the new Library.

The second component of this proposal would be to designate the location of the new Senior Center at the existing library building in the Civic Center. The existing Library building, built in 1982, would be renovated and expanded to provide all of the elements for a superior new Senior Center. The size of the existing Library building is close to the size of the proposed new Senior Center. A new commercial-grade kitchen would be added to support nutrition programs and other events at the new Senior Center. The remodeled building would preserve foothill vistas and appropriate connections to the Civic Center open space, fountain and Veteran's Memorial areas. The parking demands for the new Senior Center could also be met with the existing available parking at the existing Civic Center.

At the request of the Library Subcommittee, community input was sought on this site proposal. This proposal was presented to and positively received by the Senior Facilities Subcommittee, Library Advisory Commission, Senior Advisory Commission, and County Library staff. Information has been posted on the City's web page and a community meeting is scheduled for June 30, 2003. A proposal "Fact Sheet" is included in the Council's packet.

Both Advisory Commissions and the Senior Facilities Subcommittee recommend approval of this proposal to designate the location of the new library at 160 N. Main St. and to designate the location of the new Senior Center at the existing Milpitas Library at the Civic Center. The Library Subcommittee is scheduled to meet on July 1, 2003. A summary of the comments received and additional background information will be presented at the council meeting, including the Library Subcommittee's recommendation.

RECOMMENDATION:

1. Approve the proposal to locate the new Library at 160 N. Main St. and locate the new Senior Center at the existing library building at the Civic Center.
2. Direct staff to continue with the pre-design studies considering the new locations of the Library and Senior Center.

XVI. NEW BUSINESS

9. AUTHORIZE IMPLEMENTATION OF THE ECONOMIC DEVELOPMENT ON-LINE COMMERCIAL PROPERTY INVENTORY AND SEARCH PROGRAM (STAFF CONTACT: BLAIR KING 586-3060)

BACKGROUND: Due to the weakening economy, vacancy rates of commercial and retail properties have increased. To assist in filling vacant commercial property and to market and recruit business, the creation of a new web page is proposed that would be linked to the City's existing web site to allow individuals to search for commercial property in Milpitas. This economic development tool will increase Milpitas' marketing capability and improve staff efficiency. Collecting property data utilizing the traditional method of driving around town and calling property owners and agents is time consuming. The proposed system creates an incentive for owners and/or their agents to provide the City with pertinent information for posting on-line.

In brief, owners and/or agents of any commercial/retail property in Milpitas may submit property information to the City in a specified format (digital or paper). On a regular basis (once per week) City staff will update and purge data. The result is an on-line property listing service. Users can search for sites by pointing and clicking on a map or by using parameters such as size and location. Users will be referred to contact individuals. City staff will not represent properties in any way and the City is not responsible for the accuracy of the data.

This program can be implemented at no additional cost to the City through the use of currently owned software (GeoMedia) and hardware. The program has been developed upon consultation with the real estate industry and is modeled after successful programs in other Bay Area cities. On June 9th the Economic Development Commission recommended that the program be implemented. This program was also included as a goal for the Economic Development program in the Fiscal Year 2003-04 Budget.

RECOMMENDATION: Authorize the implementation of the Economic Development On-Line Commercial Property Inventory and Search Program.

***10. AUTHORIZE COST RECOVERY PROGRAM FOR LEGAL SERVICES ASSOCIATED WITH LAND USE DEVELOPMENT APPLICATIONS AND AUTHORIZE AMENDMENT NO. 4 TO THE AGREEMENT FOR LEGAL SERVICES BETWEEN THE CITY AND MEYERS NAVE (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: As part of the budget process for Fiscal Year 2002-2003, our office in consultation with the City Attorney Subcommittee considered the concept of instituting cost recovery for legal services associated with development applications processed by the City. Under this approach, the cost of the legal services we provide to the City are reimbursed to the City by the project applicant. Cost recovery allows costs that are presently being funded as general fund expenditures to ultimately be paid by the developers who realize the private gain associated with development. The concept is similar to issues such as payment for contract planners and environmental document preparation. This cost recovery process has been used by many cities throughout the bay area and state for many years.

The City Attorney Subcommittee has recommended that the City Council authorize a cost recovery program for the legal services that we provide. The hourly rate for these services would be \$195 per hour, which is in the middle of the range of cost recovery rates we presently charge to other clients. The program would apply to all development applications in the City for new construction other than an application for an individual single family residential unit. To implement this change, it is appropriate to consider an amendment to one portion of the legal services agreement between the City and Meyers Nave to increase the cost recovery hourly rate. There are no other changes proposed to our agreement with the City for the upcoming fiscal year.

RECOMMENDATION: Authorize cost recovery program for legal services associated with development applications for development projects other than an individual single family residential unit and authorize Amendment No. 4 to the agreement for legal services between the City and Meyers Nave.

***11. APPROVE ASSIGNMENT AND ASSUMPTION OF SIGN LEASE FROM GREAT MALL OF THE BAY AREA ASSOCIATES, L.P. TO THE MILLS L.P. (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: In December of 2001, the City entered into a lease with Great Mall of the Bay Area, Associates, L.P. ("Great Mall") for property along Interstate 880 on which Great Mall has erected a directional sign. In conjunction with a proposed sale of the entirety of the Great Mall property to The Mills Limited Partnership ("Mills"), Great Mall now wishes to assign the sign lease to Mills. The lease requires the City's written consent to any assignment and requires compliance with certain conditions. The proposed consent included in the Council's agenda packet hereto provides that the City's consent is conditioned upon Great Mall and Mills complying with the requirements of the assignment provisions of the lease. It also states generally that the lease remains in effect and that Great Mall is not in breach of and has complied with the terms of the lease.

RECOMMENDATION: Approve the Consent to Assignment and Assumption of the Sign Lease from Great Mall of the Bay Area, Associates, L.P. to The Mills Limited Partnership, and authorize the City Manager to execute it on the City's behalf.

XVII. ORDINANCE

- *12. ADOPT ORDINANCE NO. 23.9 AMENDING CHAPTER 2 OF TITLE I OF THE MUNICIPAL CODE RELATING TO PURCHASING (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Ordinance No. 23.9 was introduced at the Council's June 17, 2003, meeting and is now ready for second reading and adoption. The ordinance makes changes to the Purchasing Code to reflect current operating practices for order deliveries and eliminates the bid process requirements on non-biddable services.

RECOMMENDATION:

1. Waive full reading of the ordinance.
2. Adopt Ordinance No.23.9 amending Chapter 2 of Title I of the Milpitas Municipal Code.

XVIII. RESOLUTIONS

- *13. ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: 2001 STREET RESURFACING (PROJECT NO. 4182) (STAFF CONTACT: STEVE ERICKSON: 586-3317)**

BACKGROUND: The project provided street repairs, resurfacing, and slurry seal. The project was awarded to Top Grade Construction on August 7, 2001. The contractor has completed the project, and an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$218,914.95, which is 10% of the contract amount.

RECOMMENDATION:. Adopt resolution granting initial acceptance subject to a one-year warranty period and reducing the faithful performance bond to \$218,914.95.

- *14. ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: MCCANDLESS BOX CULVERT REPAIR (PROJECT NO. 4182A) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: The project to repair the box culvert railing on McCandless Drive, was awarded to Valentine Corporation on April 1, 2003. The contractor has completed the project. Therefore an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$3,562.38, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$3,562.38.

***15. ADOPT A RESOLUTION TO TEMPORARILY SUSPEND SECTION 6.02 OF THE CITY'S PERSONNEL RULES AND REGULATIONS AS ESTABLISHED BY RESOLUTION NO. 5947 (STAFF CONTACT: CHERIE ROSENQUIST 586-3082)**

BACKGROUND: The Council adopted Resolution No. 5947 on February 5, 1991, establishing the City's Personnel Rules and Regulations. The Human Resources Director is requesting a temporary suspension of section 6.02 Employment List Duration. The current language has a two year maximum duration for any Employment List. This action would extend the life of the current entry level Employment List for FireFighter through June 2004. This action would reduce recruitment costs and save staff time.

RECOMMENDATION: Approve and authorize staff to temporarily suspend the two year Employment List rule and extend an additional year through June 2004 for the FireFighter List.

XIX. BIDS AND CONTRACTS

***16. AMEND MASTER SERVICES AGREEMENT WITH INTERGRAPH CORPORATION TO EXTEND THE AGREEMENT THROUGH JUNE 30, 2004 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In fiscal year 1998/99, the City of Milpitas embarked upon the implementation of a Geographic Information System (GIS). On August 17, 1999, Council approved the initial purchase of GIS software, training and software support, a professional service contract and an amendment to the Master Services Agreement with Intergraph Corporation.

The Master Service Agreement, including the 1st, 2nd, 3rd and 4th amendments to the Agreement, provided services in an amount not to exceed \$350,000. The term of the Master Service Agreement will expire in June 2003 and requires renewal to ensure continuation of the GIS project. No additional funding is required for this contract extension.

Approval of the 5th Amendment to the Master Service Agreement will provide continued development of the Milpitas Geographic Information System through June 30, 2004.

RECOMMENDATION: Authorize the City Manager to approve the 5th Amendment to the Master Service extending the term through June 2004 between Intergraph Corporation and the City of Milpitas.

***17. APPROVE AGREEMENT WITH CITY OF SAN JOSE AND PROPERTY OWNERS TO PROVIDE WATER AND SEWER SERVICES TO PARCELS OUTSIDE THE CITY LIMIT ON NORTH MCCARTHY BOULEVARD (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: The northern portion of North McCarthy Boulevard has several developable parcels within the City of San Jose. The City of San Jose wishes to enter into an agreement with Milpitas to provide water and sewer services to those parcels. Since the subject area is located adjacent to McCarthy Business Park and serves as a gateway to Milpitas, the City has a significant interest in ensuring that future development in that area will be consistent with the City's goals. To accomplish this, an agreement with the property owners has been developed to be executed in conjunction with the agreement to provide water and sewer services to San Jose and allowing the City to review and approve future development on the subject parcels.

RECOMMENDATION: Authorize City Manager to execute agreement with City of San Jose and property owners to provide water and sewer services to the area outside the city limit on N. McCarthy Boulevard through the City of San Jose subject to approval as to form by the City Attorney.

***18. APPROVE AGREEMENT AMENDMENT: HMH INCORPORATED, MONTAGUE EXPRESSWAY WIDENING (PROJECT NO. 4179) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On July 7, 1998, City Council awarded a consultant contract to HMH Incorporated for the design of Montague Expressway widening from Centre Pointe Drive to Highway 680.

Staff recommends that HMH Incorporated perform additional design services that have become necessary as a result of right-of-way negotiations with property owners. An agreement amendment with HMH Incorporated is proposed for these additional services with a fee not-to-exceed \$6,850, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with HMH Incorporated, in the amount of \$6,850, subject to approval as to form by the City Attorney.

***19. APPROVE AMENDMENT TO LANDSCAPE MAINTENANCE AGREEMENT WITH THE IRVINE DEVELOPMENT COMPANY, PROGRAM 9474. (CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: On March 5, 2003, the City entered into a reimbursement agreement with the Irvine Development Company for the maintenance by Irvine of a portion of public landscaping along the frontage of its development located on N. McCarthy Boulevard. The subject Landscape Improvements lie within the Lighting and Landscaping Maintenance District (LMD) No. 95-1. The reimbursement did not include water usage since it was irrigated under the overall LMD system.

Recently, the irrigation system was modified and the Irvine Development Company now pays the cost of water usage. It is now necessary to amend the agreement and adjust the compensation rate to reflect this change.

RECOMMENDATION: Approve amendment to the landscape maintenance agreement, and authorize the City Manager to execute the same, subject to the approval as to form by the City Attorney.

***20. APPROVE AGREEMENT AMENDMENT: SUGIMURA & ASSOCIATES, MONTAGUE EXPRESSWAY WIDENING (PROJECT NO. 4179) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On January 04, 2000, City Council awarded a consultant contract to Sugimura & Associates for professional landscape design services for the Montague Expressway widening from Centre Pointe Drive to Highway 680.

Staff recommends that Sugimura & Associates perform additional landscape design services which have become necessary as a result of right-of-way negotiations with the property owner between Great Mall Parkway and Centre Pointe Drive. An agreement amendment with Sugimura & Associates is proposed for these additional services with a fee not-to-exceed \$3,450, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Sugimura & Associates, in the amount of \$3,450, subject to approval as to form by the City Attorney.

***21. APPROVE CHANGE ORDER FOR \$9,300 TO SBC DATACOM FOR ADDITIONAL BORING CHARGES NECESSARY FOR THE INSTALLATION OF FIBER OPTIC CABLE TO FIRE STATION 2 (PROJECT NO. 8093) (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: The City adopted a Master Telecommunications Policy (Resolution No. 6353) in September of 1994 and in 1995 Council adopted a Master Telecommunications Plan. This plan included the installation of a fiber optic network to provide voice, video and data services to the City's main facilities. On May 1st, 1997, the City issued a Request for Proposal (RFP) for network equipment for the first phase of the Tele/Data network infrastructure, along with proposals for future phases to complete the network build out. The initial phase of the telecommunications capital project for installation of the fiber ring was completed in December 1998. Phase I is operational, with the City now having a fully functioning fiber optic network backbone. Phase II completed the connections for 3 City locations that included: the Public Works / Police Department building, the temporary City Hall and Fire Station 1 providing voice, data, and video capability. Phase III involves the connection of the seven remaining City facilities, to include Fire Stations 2, 3 and 4, the Great Mall Substation, the Senior Center, the Sports Center and the Community Center.

Many of the activities associated with Phase III have been completed including connection to Fire Stations 3 and 4, the Great Mall Substation, the Community Center and the new City Hall. Connection to the Sports Center and the Senior Center are currently in progress and will be achieved through a wireless bridge until the final Senior Center and Library are completed. Thus only Fire Station 2 remains to be added to the City's Fiber Optic Network.

SBC DataCom has continued to provide network equipment and services to the City for all of its fiber optic installations. Many of the projects were completed at no cost to the City due to the negotiation of agreements for the exchange of services between the City and SBC. Specifically, leases were prepared to allow SBC to use portions of City owned conduit located in the City's Right of Ways for their communications needs in exchange for services provided by SBC.

SBC is now ready to complete the work necessary to install fiber optic cable at Fire Station 2 but has learned that they must bore an additional 2 feet deep in order to achieve the necessary clearance from other underground utilities. The extended boring and disposal of materials will require an additional \$9,300 charge to the City. This charge is reasonable and staff recommends approval of this change order.

Funding for this change order is available in the Capital Improvement Program Telecommunications Infrastructure 8093. Approval of this change order will allow for the completion of the fiber optic network connection to Fire Station 2.

RECOMMENDATION: Authorize the City Manager to approve a change order to SBC in the amount of \$9,300 for the installation of fiber optic cable to Fire Station 2.

***22. APPROVE CONSULTANT AGREEMENT WITH B A ZUHDI CONSULTING ENGINEERS (STAFF CONTACT: GREG ARMENDARIZ 586-3220)**

BACKGROUND: Plans and specifications for the modular addition to the interim Senior Center, located at the Cracolice Building at 540 South Abel Street, are currently out for bids. Staff is also currently working on the development of construction contract documents for interior improvements to the interim Senior Center.

Structural engineering and architectural consulting services are required for two specialty areas of this project required for planned improvements to upgrade the existing kitchen to meet the demands of the Senior Nutrition Program. Staff recommends contracting with BA Zuhdi

Consulting Engineers to provide staff support and assistance with technical specifications, AutoCAD drawings, structural analysis and engineering, commercial kitchen layout and design which is compliant with the County health codes, quantity take-offs and engineering estimates.

B A Zuhdi Consulting has ample experience in the design and construction, of tenant improvements similar to those of this project. The Consultant was interviewed and selected in accordance with the established City's consultant selection process. In addition, staff has previous favorable experience with this consultant. The work is proposed on a time and materials basis and sufficient funds are available in the project budget.

RECOMMENDATION: Authorize the City manager to execute a professional services contract with B A Zuhdi Consulting Engineers in an amount not to exceed \$50,000, subject to approval as to form by the City Attorney.

***23. APPROVE CONTRACT BETWEEN MILPITAS RECREATION SERVICES AND THE CITY OF FREMONT TENNIS CENTER. (STAFF CONTACT: LYNETTE WILSON, 586-3216)**

BACKGROUND: The City of Milpitas Recreation Services has contracted with the City of Fremont Tennis Center to provide tennis lessons to the Milpitas community as a contracted instructor for the past several years. Both parties want to extend the services for an additional year through this contract commencing on July 1, 2003, and ending on June 30, 2004. This contract is included in the Council's packet for review and has been approved as to form by the City Attorney.

Milpitas Recreation Services handles all registration for classes and all lessons are taught on City of Milpitas tennis courts. During FY 2002-03, over 500 people enrolled in tennis lessons and camps throughout the year.

RECOMMENDATION: Approve contract for City of Fremont Tennis Center to provide tennis lessons through Milpitas Recreation Services from July 1, 2003, and to June 30, 2004.

***24. APPROVE CONTRACT RENEWAL FOR EXCESS WORKERS' COMPENSATION INSURANCE (STAFF CONTACT: C. ROSENQUIST, 586-3082)**

BACKGROUND: The City carries excess workers' compensation insurance to allow for medical and settlement expenses beyond \$750,000. The City's incumbent carrier, Employer Reinsurance Corporation, who is a major writer of Municipal Excess Workers' Compensation, has recently discontinued providing this coverage in California. Cal-Surance, our insurance broker, sent out a bid request and ACE American Insurance Company quoted a bid offer. Coverage will be for a \$1,000,000 limit with a \$750,000 deductible. The renewal premium for fiscal year 2003-04 is \$179,737 and is based on the City's payroll.

RECOMMENDATION: Approve acceptance of ACE American Insurance Company for the City's excess workers' compensation insurance for FY 2003-2004, authorizing staff to pay Cal-Surance the premium rate of \$179,737.

***25. APPROVE PLANS AND SPECIFICATIONS: INTERIM SENIOR CENTER SITE IMPROVEMENTS (PROJECT NO. 8151) (STAFF CONTACT: MARK ROGGE, 586-3257)**

BACKGROUND: On April 15, 2003, the City Council established Capital Project No. 8151, Interim Senior Center, with a total budget of \$573,000. The project's goals are to increase program space and improve the Interim Senior Center located at the Sal Cracolice site at 540 South Abel Street.

Plans and specifications for the Modular Building Addition were previously approved by the City Council and are out to bid. The project currently before the City Council is the site improvements at 540 South Abel Street that are necessary to prepare the site for installation of the modular building prior to delivery and to complete the architectural improvements after installation of the modular building. Work includes minor demolition, extending utility lines, relocating the refuse enclosure, site paving; constructing stairs, decks, ramps and awnings next to the modular building and landscaping.

Staff prepared plans and specifications for the site improvements. A diagram is provided in the Council packet illustrating the site layout, and architectural treatment at the building, along with exterior building elevations.

The estimate for the site improvements is approximately \$226,000. Staff anticipates returning to the City Council in August for award of the construction contract. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

***26. APPROVE SENIOR NUTRITION CONTRACT WITH COUNTY OF SANTA CLARA (SOCIAL SERVICES) (STAFF CONTACT: KATHLEEN YURCHAK, 586-3209)**

BACKGROUND: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older, 249 days per year, an average of 70 meals per day, for a total of 17,430 meals per year. Enclosed in the Council's agenda packet is a copy of the Contract between the County of Santa Clara (Social Services) and the City of Milpitas, which has been approved as to form by the City Attorney. The total budget for the FY 2003-04 Nutrition Program, shared by the City of Milpitas and Santa Clara County, is \$125,838. As outlined in the County's contract, the City's contribution to the program is 50% of the budget or \$62,919, which is included in Recreation Services' operating budget and has been approved by the City Council on June 3, 2003. The term of the contract with the County is for the period of July 1, 2003, through June 30, 2004. This executed full term contract will supersede the 3-month extension that was approved by City Council on June 17, 2003. The contract has been approved as to form by the City Attorney. Sufficient funds have been approved in the FY 03/04 budget.

RECOMMENDATION:. Approve the contract with County of Santa Clara (Social Services) for July 1, 2003, through June 30, 2004. The total amount of this contract is \$125,838, with the City and County each responsible for one half of the amount or \$62,919, not to exceed \$3.55 per meal.

***27. APPROVE PLANS AND SPECIFICATIONS: 2003 STREET SLURRY SEAL (PROJECT NO. 4182) (CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capitol Improvement Program (CIP). The improvements consist of Slurry seal of various City streets. The engineer's estimate for the work is \$100,000, and funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications
2. Authorize advertising for construction bid proposals.

***28. APPROVE RENEWAL OF ANNUAL HARDWARE SUPPORT AND MAINTENANCE AGREEMENTS THROUGH JUNE 30, 2004 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: The following Support and Maintenance Agreements will be expiring on June 30, 2003.

HDL Software, LLC. For Business License System	\$5,800.00
Data911 for Mobile Computing Hardware installed in Police Vehicles	\$7,440.00
Principal Decision Systems International for TeleStaff System	\$2,646.00
Peelle Technologies, Inc. for Document Imaging System not-to-exceed	\$15,000.00
American Management Systems, Inc. for Budget System	\$5,675.74
Intergraph Corporation for Geographic Information System	\$16,595.00
Identix, Inc. for Livescan Fingerprinting System	\$5,417.83

These agreements are essential for the continuing support and maintenance of hardware and software throughout the City. The annual software support and maintenance fees also entitle the City to any system enhancements developed during the year at no charge to the City. Funding for these agreements has been approved in the Information Services operational budget. No additional funding is required for these agreements.

Staff is recommending that the agreements be renewed for a one-year period ending June 30, 2004. Included in the Council's agenda packet are the various invoices and a memo briefly describing the individual usages.

RECOMMENDATION: Authorize the City Manager to approve the seven Service and Consultation Agreements, subject to approval as to form by the City Attorney.

***29. AUTHORIZE THE UPGRADE OF FIFTY FILEMAKER PRO SOFTWARE LICENSES TO VERSION 6.0 (PROJECT NO. 8109) (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: Numerous departments in the City use the FileMaker Pro software package to aid in the completion of their daily tasks. This software package utilizes database technology to help organize information and print reports. The software is currently in use in the City Clerk's office, Fire Department, Engineering Department, and Finance Department. The City is currently utilizing version 3.0 for the majority of its applications. The current version of the software that is available for use is version 6.0. The new version of the FileMaker Pro software provides a significant increase in functionality and flexibility. The Fire department, with the help of the Finance department, is in the process of automating its invoicing process to improve the delivery of service to City businesses and to ease some of the workload of the Finance department. The new version of the FileMaker Pro software will assist in this process improvement effort.

Additionally, the new version of the software will help support the implementation of the electronic capture of field inspection data for the Fire department.

The upgrade of the current FileMaker Pro software license from version 3.0 to version 6.0 will allow the current users of the software the opportunity to improve processes, streamline data gathering and integration and shorten the development time of new applications. The cost for the upgrade of 50 licenses will not exceed \$8,500. There is sufficient funding in the current year Capital Improvement Program (Project No. 8109) to support the upgrade of the software.

RECOMMENDATION: Authorize the upgrade of fifty FileMaker Pro software licenses to version 6.0 in an amount not to exceed \$8,500.

***30. AUTHORIZE CITY MANAGER TO EXECUTE CONTRACT WITH THE CITY OF SAN JOSE TO PROVIDE ANIMAL CONTROL SERVICES (STAFF CONTACT: FELIX RELIFORD 586-3071)**

BACKGROUND: At its June 6, 2000, meeting, the Council direct staff to negotiate with the City of San Jose to provide animal control services for the City of Milpitas. In the past, the Humane Society of Santa Clara Valley has provided the City with these services, however, since the enacted of SB 1785 by the State of California, which required longer holding periods for animals before being euthanized. The Board of Directors of the Humane Society decided that due to the additional requirements imposed by SB 1785, they would no longer provide animal control services. Instead, effective July 1, 2001, they could become an adoption agency only.

Since July 1, 2001, the City of San Jose has provided the City of Milpitas with Animal Control Services. The Animal Control Services Agreement is before the City Council at this time because:

- After the Humane Society decided to no longer provided animal control services, the City of San Jose was required to establish a new Animal Care and Services Division;
- The City of San Jose has been preparing plans for a new 50,000± sq. ft. Animal Shelter and Facility which will include space for Milpitas animals;
- The City of San Jose has been interviewing and hiring staff from the Humane Society;
- The City of San Jose was been obtaining equipment and files that were previous borrowed by the Humane Society.

The proposed Animal Control Services contract agreement is a three-year contract from July 1, 2003 until June 30, 2006. The cost of the one-year contract agreement is \$179,102 for FY 2003-2004. Staff has budgeted appropriate funds to cover these costs. The Humane Society is continuing to shelter the animals until San Jose builds the new shelter facility. The new San Jose Animal Shelter Facility will be opening in the Fall.

Animal Control Services

The City of Milpitas has been receiving the same level of services as previously provided by the Humane Society. These animal control services includes:

- Field Services-Pick up dead and injured animals, confining stray animals, response to emergency calls, investigating complaints, respond to police assistance;
- Response Time Performance Standards-Priority 1, 2, 3 and 4 calls, and responding to after business hour calls;
- Sheltering Services-Sheltering abandon, impounded, lost or stray animals, quarantine of biting animals, rabies testing of suspect animals, provisions for surrender and claim animals of abandoned, lost of stray, euthanization and disposal of abandoned, lost or stray animals;
- Medical Services-Provisions for veterinarian services 24 hours per day to treat and provide veterinarian care to stray, injured or sick animals;

- Dead Animals Services-Pick up dead animals between the hours of 5:00 p.m. and 7:00 p.m. (Note: During the hours of 7:00 a.m. to 5:00 p.m. City of Milpitas Public Works staff provides Dead Animal Services.)

Like the Humane Society previous contract agreement, the City of San Jose will be required to provide the City of Milpitas with Quarterly Reports. To date, staff has not received any complaints regarding the level of animal control services provided by the City of San Jose.

Included in the Council's agenda packet is a copy of the Animal Control Services contract agreement with the City of San Jose and Milpitas.

RECOMMENDATION: Authorize City Manager to execute the contract agreement with the City of San Jose to provide Animal Control Services in the amount not-to exceed \$172,102 for FY 2003-2004, subject to approval as to form by the City Attorney.

***31. AUTHORIZE PURCHASE OF CURBSIDE RECYCLING BINS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued a Request for Quotation for 8,600 curbside recycling bins to the five suppliers on Purchasing's bidders list. These are the standard 14 gallon forest green bins, hot stamped with white impression on two sides used for household recycling. This order will be replenishing the depleted inventory stock at the BFI warehouse used for replacement of broken residential bins. Four vendors responded with the following quotes including tax and shipping:

<u>Bidder</u>	<u>Amount</u>
SCL A-1 Products	\$34,538.25
Recy-Cal Supply	\$43,940.84
Recycling Products Co.	\$68,331.73
Area Distributing Co.	\$76,244.81

There are sufficient funds in the fiscal year 2002/03 Engineering Division operating budget for the purchase of the recycling bins.

RECOMMENDATION: Award the bid for the purchase of the recycling bins to the lowest bidder SCL A-1 Products, in the amount of \$34,538.25 including tax and shipping.

***32. AWARD CONSTRUCTION CONTRACT: PARK PLAYGROUND EQUIPMENT UPGRADE (PROJECT NO. 5077) (STAFF CONTACT: STEVE ERICKSON, 586- 3317)**

BACKGROUND: On May 20, 2003, the City Council approved the project plans and specifications and authorized the advertisement of the project for bids. This project provides for installation of new playground equipment, rubber play surface and new sand at Foothill, Dixon Landing, Hall and Pinewood Parks. Sealed bids were opened on Tuesday, June 10. The two proposals were \$525,147 from DK Environmental and \$699,676.30 from Blossom Valley Construction. The consultant's estimate for the work was \$445,953.56. The low bid is 18% higher than the estimate. The higher than expected cost appears to be due to the prices for sand and decomposed granite paving. These materials must be certified as free of hazardous materials, and it is thought this is the reason for the cost increase. The remaining item prices remain competitive and therefore it is recommended that the project be awarded to the low bidder, DK Environmental. The bid also included two add-alternate items for consideration by the City. Upon review of the add-alternate prices for asphalt and rubber resilient surface at the swing areas, staff recommends proceeding with the work for an additional \$10,640.00. A staff memorandum is included in the Council's agenda packet provides further information.

The majority of the playground equipment is manufactured by Little Tikes Commercial Play Systems Inc., which has already been competitively bid by the State of California, Department of

General Services. The State offers attractive bid pricing with an administrative fee (1.21% due to the State) to local agencies under the California Multiple Award Schedule (CMAS). Ordinance I-2-5.06 has been adopted by the City to take advantage of purchases through this mechanism. Staff is recommending that the City purchase the equipment under CMAS at a cost of \$206,316.89. This equipment would be delivered to the park sites for installation in September.

RECOMMENDATION:

1. Award the contract to DK Environmental with the inclusion of add alternates in the amount of \$535,787.00.
2. Authorize the City Manager to execute a purchase order through State Contract No. 4-00-78-00010A for playground equipment by Little Tikes Commercial Play Systems Inc., in an amount of \$206,316.89.

***33. AWARD CONSTRUCTION CONTRACT: TRAFFIC SIGNAL AT BARBER LANE AND BELLEW DRIVE (PROJECT NO. 4212) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On June 3, 2003, the City Council approved the project plans and specifications and authorized the advertisement of the project for bids. The project provides for the installation of a traffic signal at Barber Lane and Bellew Drive including the installation of diagonal street parking along the east side of Barber Lane, north of the intersection. Sealed bids were opened on Tuesday, June 24. The proposals ranged from \$214,887 to \$255,525. The consultant's estimate for the work was \$217,815. The low bidder was Mike Brown Electric. .

RECOMMENDATION: Award the contract to Mike Brown Electric in the amount of \$214,887.

***34. AWARD BID FOR PURCHASE OF A REPLACEMENT MICROFILM READER/PRINTER (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff requested bids from the two known microform equipment dealers for replacement of a 14 year old microfilm reader/printer in the City Clerk's Office. This equipment was originally approved for replacement in fiscal year 2001/02, the purchase was delayed to fiscal year 2002/03 to defer spending as the old equipment was operating satisfactorily. It has since become problematic and should be replaced as it has exceeded its 12 year useful life.

The following is the recap of bids received which includes delivery, setup and tax:

Minolta Business Solutions, Inc.	\$11,367.07
BMI Imaging Systems	\$11,749.66

There are sufficient funds in the fiscal year 2002/03 Equipment Management replacement fund for this capital outlay purchase.

RECOMMENDATION: Award the bid for the microfilm reader/printer to Minolta Business Solutions, Inc. in the amount of \$11,367.07.

XX. CLAIMS AND DEMANDS

***35. AUTHORIZE BUDGET APPROPRIATION AND PAYMENT OF INVOICES FOR EMERGENCY REPAIR OF PAVEMENT SUBSIDENCE AT NORTH MCCARTHY BOULEVARD (PROJECT NO. 6057) (STAFF CONTACT MIKE MCNEELY, 586-3301)**

BACKGROUND: Staff recently responded to reports of a pavement subsidence developing in North McCarthy Boulevard near Ranch Road. Preston Pipelines performed an emergency excavation and a geotechnical engineer reviewed the site and its history. The identified cause was voids also under the median and roadway. Compaction tests and borings were taken to identify the boundaries of the voids. The geotechnical expert recommended that the City immediately fill the voids with pressure grouting to prevent further roadway damage and any damage to the sewer, water, and storm lines underneath

The grouting began on June 11 and was completed on June 25. Pavement and landscape repair is anticipated to be completed by July 3. The preliminary estimated costs of the investigation, repair, and restoration work are as follows:

• Investigation (excavation, traffic control)	\$15,000
• Geotechnical Consultant	
-- Initial investigation and testing	\$10,000
--Follow up investigation regarding detailed analysis of cause	\$10,000
• Pressure Grouting	\$40,000
• Pavement and Landscape Restoration	\$30,000
• Staff time	\$8,000
• Contingency For Possible Additional Repairs and Investigation	<u>\$20,000</u>
Total	\$133,000

Staff recommends a budget appropriation of \$133,000 from the sewer reserve fund to the Miscellaneous Minor Sewer Project No. 6057.

RECOMMENDATION:

1. Approve a budget appropriation of \$133,000 from the sewer reserve fund to the Miscellaneous Minor Sewer Projects No.6057.
2. Authorize Staff Payment of invoices for emergency work

***36. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS/CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$7,015.04 to Dictaphone Corporation for annual maintenance of the 911 voice/logger recorder system for the Police Department. (Funds are available from the fiscal year 2002/03 Police Department operating budget for this service.)
2. \$75,200.00 to the U. S. Postal Service for the annual replenishment of postage meter funds for the City's outgoing metered mail for the Purchasing Division. (Funds are available in the current year Finance Department operating budget for this purchase.)
3. \$24,000.00 to the Milpitas Unified School District for the City's share of secretarial services for the Youth Services Bureau for the Police Department. (Funds are available in the current year Police Department operating budget for this service.)

4. \$5,178.68 to Citation Press for the printing and folding of 5,000 copies of the revised City's bicycle map for the Bicycle Transportation Advisory Committee. (Funds are available from the Misc. Minor Traffic Projects [Project No. 4024] for this purchase.)

RECOMMENDATION: Approve the purchase requests.

37.* APPROVE PAYROLL REGISTERS (STAFF CONTACT: EMMA KARLEN, 586-3145)

BACKGROUND: The Payroll Registers for the periods ending May 31, 2003, in the amount of \$1,580,378.45, and June 14, 2003, in the amount of 1,568,966.94 are submitted for approval.

RECOMMENDATION: Approve Payroll Registers as submitted.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 5, 2003, AT 7:00 P.M.**

NOTICE:

Beginning August 5, 2003, the public portion of the City Council meetings will begin at 7:00 p.m.